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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

KURTIS DEAN LEE,

Defendant and Appellant.

C047275

(Super. Ct. No. 03F5155)

Following denial of his motion to suppress the evidence, defendant Kurtis Dean Lee entered a negotiated plea of no contest to possession of methamphetamine for sale. (Health & Saf. Code, § 11378.) Pursuant to the plea agreement, the trial court sentenced him to state prison for the upper term of three years with a concurrent term for an offense in another case.

On appeal, defendant claims the trial court erred by denying his motion to suppress the evidence. We disagree and shall affirm the judgment.

FACTUAL BACKGROUND

In his motion to suppress the evidence, defendant claimed the affidavit supporting a search warrant for his person and apparent residence was insufficient on its face to support a finding of probable cause. The affidavit was submitted by Officer Harry Bishop of the Redding Police Department on July 3, 2003, and it revealed the following facts:

Between June 23 and July 3, 2003, Officer Bishop spoke with an informant whom Bishop referred to as a "Confidential Reliable Informant" or "CRI." According to Bishop, "CRI has provided truthful information to law enforcement in the past which has resulted in the procurement of at least one search warrant which resulted in the discovery of narcotics leading to the arrest and conviction of violators. The CRI has never provided law enforcement with information which proved to be incorrect, or misleading. The CRI has no pending criminal matters to the best of your affiant's knowledge. CRI may receive monetary consideration for the information given."

The informant was familiar with defendant, whom the informant called "Kurt" or "Kurtis." The informant said defendant was selling methamphetamine from his home and gave Officer Bishop the address. The informant knew this because he or she had personally been inside defendant's home between the dates described in the affidavit (June 23 and July 3). The informant saw a large amount of methamphetamine and described that amount to Bishop. Based on the officer's training and

experience, this amount was "most certainly an amount possessed for sale." While the informant was at defendant's home, at least two persons arrived and bought methamphetamine from defendant. The informant was familiar with the appearance and packaging of methamphetamine and had bought it for personal use numerous times.

Officer Bishop did a records check for the address the informant gave him and learned there were numerous prior contacts with defendant there. In 1996, defendant was arrested for transportation of a controlled substance (Health & Saf. Code, § 11379) and possession of a controlled substance (Health & Saf. Code, § 11377). He pleaded guilty to possession of a controlled substance and received diversion. In 1998, he was charged with possession of drug paraphernalia (Health & Saf. Code, § 11364) and possession of a hypodermic needle (Bus. & Prof. Code, § 4140). He pleaded guilty to possession of drug paraphernalia and was given probation. Defendant had a current, outstanding arrest warrant for writing checks based on insufficient funds. (Pen. Code, § 476a.) Bishop showed the informant a photograph of defendant, and the informant said defendant was definitely the person selling methamphetamine at the home.

Based on his training and experience, Officer Bishop also described common facts and characteristics concerning drug trafficking operations. For example, Bishop noted that persons selling methamphetamine ordinarily kept supplies of it at their

residences so it would be readily available for sale and to maintain their customers.

DISCUSSION

"The question facing a reviewing court asked to determine whether probable cause supported the issuance of the warrant is whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing. [Citations.] 'The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" (*People v. Kraft* (2000) 23 Cal.4th 978, 1040-1041, quoting *Illinois v. Gates* (1983) 462 U.S. 213, 238 [76 L.Ed.2d 527, 548].)

Having reviewed the affidavit, we agree with the trial court that there was probable cause for the issuance of the search warrant. Defendant suggests there was insufficient independent corroboration for the informant's tip and that the affidavit does not adequately establish that the informant was reliable. It is true that "unverified information from an untested or unreliable informant" is ordinarily insufficient to establish probable cause "unless it is 'corroborated in essential respects by other facts, sources or circumstances.'" (*People v. Johnson* (1990) 220 Cal.App.3d 742, 749, disapproved

on other grounds in *People v. Camarella* (1991) 54 Cal.3d 592, 606, fn. 6.) But here, there was evidence the informant was tested and reliable.

First and foremost, the informant had previously provided accurate information to police that had led to the procurement of a search warrant, the discovery of drugs, and the conviction of violators. Defendant responds that there is no evidence the informant had provided accurate information on more than one occasion and that Officer Bishop did not say when that was. But defendant cites no authority suggesting an informant who has provided accurate information on a single occasion (that may not be recent) is not sufficiently reliable to establish probable cause. In fact, defendant relies primarily on cases having to do with anonymous tips to support his argument. And though police did not independently corroborate the allegation of ongoing drug sales, Officer Bishop did verify that there were prior contacts with defendant at the address the informant provided and that defendant had a prior history of drug activity.

Defendant also questions the informant's reliability based on his motives and background. Defendant argues, "The affiant fails to explain why the informant so eagerly gave information except to say that the informant 'may receive monetary consideration' for the information. It is evident that the informant was himself a drug user in that the affidavit declares that he or she 'has purchased methamphetamine for use numerous

times in the past.'" But the fact that the informant had used drugs does not suggest he or she necessarily had a motive to lie in the current case, and the possibility (or likelihood) of monetary compensation does little to weaken his or her credibility. In fact, Officer Bishop noted that the informant was not facing any pending charges of which the officer was aware. Moreover, Bishop emphasized this informant had never provided inaccurate or misleading information to law enforcement.

Finally, defendant notes that the information that defendant was selling drugs at the house could have been as much as 10 days old. Admittedly, the time element is crucial to the issue of probable cause because "[a]n affidavit supporting a search warrant must provide probable cause to believe the material to be seized is still on the premises when the warrant is sought." (*People v. McDaniels* (1994) 21 Cal.App.4th 1560, 1564.) However, there is no clear-cut rule regarding when the time span is too attenuated. (*Alexander v. Superior Court* (1973) 9 Cal.3d 387, 393.) Assessment of whether the information is sufficiently timely in a particular case is dependent on its particular facts and circumstances. (See *ibid.*) Because the evidence here suggested defendant had large quantities of methamphetamine and was actively engaging in drug sales at his home, the fact that the information was as much as 10 days old does not vitiate the finding of probable cause.

In sum, the affidavit was sufficient, on its face, to support a determination of probable cause. Accordingly, we need not reach the People's fallback argument that admission of the evidence was also justified based on the so-called "good-faith" exception to the exclusionary rule. (See *United States v. Leon* (1984) 468 U.S. 897 [82 L.Ed.2d 677].)

DISPOSITION

The judgment (order denying defendant's motion to suppress) is affirmed.

_____, BUTZ, J.

We concur:

_____, SIMS, Acting P. J.

_____, HULL, J.